

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
February 25, 2019 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Terry Dayvolt, Doris Horn, Paul Keller, Mike Moesner, and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, Molly Barnhill, Assistant Director, and Kim Kaiser, staff.

MEMBERS ABSENT: Jeff Willis

MINUTES:

Chairman Valiant called for a motion to approve the minutes from January 28, 2019.

Mike Winge made a motion to approve the minutes for the January 28, 2019 meeting as circulated.

The motion was seconded by Doris Horn and approved unanimously.

VARIANCES:

BZA-V-19-02

APPLICANT & OWNER: First Federal Savings Bank by Mike Head, President/CEO

PREMISIS AFFECTED: Property located on the north side of Bell Oaks Dr. approximately 516 feet east of the intersection formed by Bell Oaks Dr. and Bell Rd, Ohio Township, Lot 3 in Bell Oaks Subdivision 8388 *Bell Oaks Dr.*

NATURE OF CASE: Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an addition of a building into the 25 foot building setback line thus requesting an 8 foot relaxation from the requirements in a “C-4” General Commercial Zoning District.(*Advertised in The Standard February 14, 2019*)

Christy McBride, Executive Vice-President/COO for First Federal Savings Bank and Rick Mills, PE for Mills-Wallace and Associates, Inc. representing First Federals Savings Bank as Project Engineer were present.

Chairman Valiant called for a staff report.

Mrs. Rector stated we have all of the return receipts from the certified mail to the adjacent property owners. She said the existing land use is a bank and the surrounding zoning and land use are all zoned "C-4" General Commercial with multiple commercial businesses. She stated there was no flood plain on the property. She said the existing entrances are off Bell Oaks Dr. She stated she does have a letter from Bobby Howard, Warrick County Engineer, which stated he had inspected the property and the proposed improvements didn't appear to pose a sight distance issue. She said the normal set back in a Commercial Zoning is five feet. She said this parcel had a 25-foot setback on the plat, which was put on by the developer. She said applicant's statement "The construction of a new façade in the 25 foot building setback line. Applicant is proposing a 17' building setback line thus requesting an eight foot relaxation from the regular requirements." She said as she had stated they could have put a five-foot setback on this but the developer chose to put a 25 foot so as you could see by the plot plan it was just a small amount by the statement that was read. She stated the application was in order.

Chairman Valiant asked if the applicant had anything to add to the staff report.

Rick Mills stated this project was a major improvement to the exterior and the interior of the facility. He said they were excited about the opportunity to do this improvement to the area.

After ascertaining there were no other questions from the Board or remonstrators for or against the project he called for a motion.

I, Mike Moesner, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is current property setback greatly exceeds the County's required for this zoned district.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.

5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to a Building Permit being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easement and facilities in place.

Motion was seconded by Doris Horn and unanimously approved.

Mrs. Rector stated the office would have the approval done by Wednesday.

SPECIAL USES:

BZA -SU-19-03

APPLICANT: Vertical Bridge (BRT Group, LLC) by Todd Briggs, Attorney

OWNER: Tracy Weber by Todd Briggs, Attorney

PREMISES AFFECTED: Property located on the west side of Eby Rd approximately 1,500 feet north of the intersection formed by N. Folsomville Rd and Eby Rd, Boon Twp. 23-5-8 2399 Eby Rd.

NATURE OF CASE: Applicant requests a Special Use, SU 18, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a 300 foot tower with 10 foot lightening arrestor (310' total height) and accessory equipment to be located within an 80x80 lease area in a "C-3" Highway Commercial Zoning District.*(Complete legal on file) (Advertised in The Standard February 14, 2019)*

Todd Briggs, Attorney for Vertical Bridge (BRT Group, LLC) and Tracy Weber, property owner, were present.

Todd Briggs stated the Chairman had gone through quite a bit of the application there. He said he represented BRT Group otherwise known as Vertical Bridge and their primary carrier was T-Mobile that would be located on this tower. He said they had requested a Special Use Permit to construct a 300' self-support tower with an 80'x 80' compound and a separate access drive off Eby Rd.

Chairman Valiant stated he didn't want to cut him off but he would have Sherri go through the staff report and then he could add whatever he wanted.

Attorney Briggs replied that sounded good.

Chairman Valiant called for a staff report.

Mrs. Rector stated we have all of the return receipts from the certified mail to the adjacent property owners. She said the existing land use is two unattached accessory buildings with a Conditional Use applied for under BZA-CU-98-02 for an equipment storage yard that was approved by the Board of Zoning Appeals. She stated the owners of this property also own the property to the north where their residence is located. She stated the tower is 455.82 feet from the residence. She said the surrounding zonings and land use to the north, east, and west are zoned "A" Agriculture with residence or vacant. She said to the south is zoned "M-2" General Industrial with a motor manufacturing plant, which is Mohler Electric. She stated there is no flood plain. She said they would need to file a Commercial Driveway Permit and construct the drive or post surety before the permit for the tower would be issued. She stated the tower is designed to fold over, per their engineer, onto the lower portion of the tower in case of a failure. She said if the tower would have a total separation the collapse would be within a radius of 40 feet or less. She said the applicant's statement "Construct and operate a wireless communication facility; 300 foot self-support tower with a 10 foot lightning arrestor for an overall height not to exceed 310 feet; 80'x80' fenced compound for installation of ground equipment." She said you should also have in your packet a paper submitted today where the nearest towers are in conjunction with this one and a statement why they didn't want to co-locate on any of those. She stated the application is in order.

Attorney Briggs stated the purpose of this site was for T-Mobile to enhance their coverage in this area and to bring some additional services to the area and this tower is required to do that. He stated they had looked at several other towers in the area and you have the verbiage in front of you but this tower site would operate in conjunction with the other T-Mobile sites in the area and close some coverage gaps that they have currently and more that they foresee in the future with the latest technology. He said with that he would entertain any questions.

Mike Moesner asked if he said this was a self-supporting tower so it needs no guide wires, is that correct.

Attorney Briggs replied that is correct.

Mike Moesner asked how it fell over (hand motions) like this instead of like this.

Attorney Briggs replied you have in your packet, he believed, a letter from the tower manufacture, the engineer; it was just how they designed it. He said it does fail, normally they don't, but if it would, they collapse amongst themselves within a 40-foot footprint.

Mike Winge stated he was curious as to how come they keep putting towers up, aren't they supposed to co-locate and share and they always come out with they aren't able to use the other tower.

Attorney Briggs replied they are co-located on a tower just south of there. He said this one is approximately three-fourths of a mile to the northeast. He stated one of the issues they were and did have and the Board would see this in the future, the newer technology operates differently. He said the proposed tower site would carry four different technologies. He stated it would operate in four different bandwidths, 600 megahertz, 700, 1900, and 2100. He said with the newer technology the coverage shrinks, the penetration of the signal is shrinking but it would penetrate into basements and building coverage did increase. He stated years ago, you could have a cellular tower or even the first generation, which was GSM, that signal broadcast very wide. He said it didn't penetrate very well, have a lot of capacity for, or even have the technology for internet access. He stated they were up to fifth generation GSM, UMTS, which was third generation, LT, which was fourth generation, and now they were looking at 5 G, which was fifth generation. He said that signal is very compact.

Mike Winge stated if he understood him right, the more compact or less penetration with distance of the towers there would have to be a lot more towers.

Attorney Briggs replied hopefully not a lot more.

Mike Winge stated it sounded like it would have to be.

Attorney Briggs replied in order for them to work in conjunction with the others, this search area was a half-mile radius so it was very specialized for what they were looking for. He stated this

was what they called an infill site, so that narrowed that area to a half mile radius and that had to work in conjunction with the other towers.

Mike Moesner asked if they would be leasing space to other carriers.

Attorney Briggs replied yes, this tower was built for a minimum of three carriers. He said you could see on the drawing, actually it shows four, the amount of equipment that was going on the sites now was much more than they have had in the years past. He stated he had been in the business for 20 years and they had six antennas and six radios on towers and that was all you needed. He said now you are looking at 12-15 antennas and 15-18 radios you really load up the tower site with weight and wind loading. He said another thing, not to bore you; the building code was becoming more restrictive. He stated they were at what they call revision H, which required a tower to withstand three second wind burst of 115 mph where revision F, which was four or five years ago, that was 90 mph. He said the towers had to be built sturdier. He stated any time you change equipment on a tower that tower had to be brought up to code. He said there were a lot of issues going on in the industry that is causing additional towers.

Mike Winge asked if anybody had done a site study on how many more towers they were going to have to have since this was all to cover less distance or does the Board just keep going at it with towers.

Attorney Briggs replied he would hope that 5G, the 5G technology is incredible and the latency was minute. He said the upload and download speed was better than what everyone had on your internet access in the house. He stated they had pretty well reached the breaking point, as far as technology goes, and maybe it would start to come back to where smaller equipment and less towers. He said for this point in time this is what they are required to do.

Mike Winge asked the penetration you were talking about was it, stronger penetration in closer areas.

Attorney Briggs replied absolutely. He said where before if you had your cell phone and you went to your basement you would lose the signal, now with 4G or 5G hopefully that would go away. He stated that is important. He said one of the statistics he likes to talk about was the 911 calls. He stated there are over 200 million 911 calls via wireless phones, cell phones. He said that was 80% of all 911 calls in this country are made by cell phones. He stated that was important in this point and time for emergency services.

Mrs. Rector stated it seemed like 20 years ago when the cellular towers started going up so much, she might be wrong she was trying to remember, it was like a five-mile range. She said they would bring in with circles drawn and show where it would go. She asked if now it was all getting smaller than that.

Attorney Briggs said yes, it was shrinking.

Mrs. Rector stated so now if you had one that went five miles it wouldn't have the equipment you need now for the new technology so you have to put up extra towers in combination with the existing towers.

Attorney Briggs replied this tower would actually have four different technologies installed on it.

Mike Moesner stated his understanding of the 5G was as he said; you would have to have a lot more antennas.

Mike Winge stated a lot more towers.

Mike Moesner said his understanding was they would be smaller antennas that would maybe reach to a tower and then rebroadcast.

Attorney Briggs replied there are two technologies or two sides so to speak. He said there is what they called small cell technology, which eventually your nice new lamppost may be replaced with lamppost that have the antennas already in and they were stealth. He said the small cell technology would operate in downtown areas, there again if you looked at anything to do with the future of this technology and everything that it would incorporate it is incredible. He stated then they had what is called the macro cell technology, which is the 5G on the towers itself so there are two different uses of that technology.

Mike Winge asked what is the range on the tower, the penetration, and how far out.

Attorney Briggs stated the range for the 2100 megahertz would reach past downtown in buildings. He said it would work with the tower that is just to the southwest of the one they are requesting permission to build.

Mike Winge stated more towers and he didn't see it slowing down.

Attorney Briggs said he hoped they did eventually, he knew they weren't nice to look at for the most part. He stated water tanks and utility transmission towers weren't either they were just necessary to provide service.

Mike Moesner stated that we couldn't do without them though. He added that is a fact.

Mrs. Rector stated back as he said 20 years ago it seemed like this Board had one, two, or three every month for she didn't remember how long and then it just slowed down. She said now they are just starting to come back.

Attorney Briggs agreed.

The Chairman asked for any more question's by the Board, seeing none he called for any remonstrators.

Abigail Fargen Riley, Attorney with Applegate Fifer Pulliam representing SBA Communication Corporation, gave a handout and her business card to the Board.

Attorney Doll stated for the record before you start are the Weber's present.

They acknowledged that they were present.

Attorney Doll said thank you we just needed it on the record to reflect that the owners were present.

Attorney Riley stated SBA Communications Corp is another cell phone tower company and there are two people here from the cell phone tower company. She said they own an existing tower, she believes it was referenced a little bit ago, less than a mile away. She stated the tower itself was a concrete pad with a metal structure on it and the infrastructure that brought whatever level of technology be it something that existed already or 5G that would come in the future but was not yet available anywhere. She said antennas that belong to phone companies who lease space on these towers. She stated the reason SBA cared about the proposed tower is that it's very close and repeats a lot of the same signal and in the experience of SBA, she thought it had been indicated that cell phone tower companies might want to be on multiple towers of each other, but that isn't currently the situation. She said what they are looking at right now; the top page of the handout is a letter from an Indiana engineer, David Cotton, who reviewed the current existing site coverage at several different levels. She said the colorful pages right behind the letter, and on each of the pages, you will see the same level of megahertz approximately the same height. She stated the height is indicated on there and it is 305' for the existing tower and 315' for the proposed tower and you can see from the front to the back of this same piece of paper what it looks like from the proposed coverage and the existing coverage. She stated you can see that it is very similar in what the Board is getting is something not likely to be duplicated on another tower that nearby, what you are getting is very similar coverage that shifted over. She said you are unlikely to see two different towers that close together and duplicated stronger coverage you are more likely to see the tower moving from the existing location to the other location for one or more of the carriers who may or may not co-locate.

Attorney Briggs asked if he could have a copy of the handout.

Attorney Riley stated there is a Zoning Ordinance and a Comprehensive Plan, as you know that are both applicable and they felt like this is not in keeping with either one of them. She said for the Zoning Ordinance, which you have copies of some of the pages Article V, Special Uses Section V Procedure B objectives discussed whether the use is in harmony with the Comprehensive Plan. She said also whether the use is essential or desirable to the public convenience or welfare. She stated obviously these are the things that they discuss at their meetings every month and as indicated, there are many requests for new towers and new infrastructure similar to this. She said they came up but as the Board can see from the engineer's letter, the first and second page of the handout, this would be considered overbuild. She said it did not close the coverage gap or effectively provide new coverage it provided shifted coverage.

Paul Keller asked if this is a competitive situation that both companies would be vying for the same people to go on their towers.

Attorney Riley replied yes. She said the Board might think that this is a business decision but she thought that there was a possibility that someone could potentially be misled by information that someone would be on both towers and increase their coverage.

Mike Winge said so you're saying there is a tower there right now that would automatically make that coverage.

Attorney Riley replied yes, you can see that the coverage isn't exactly the same but effectively the same and that is why she had provided the Board with not only what their current coverage looks like but also what the projected coverage would look like at the levels that are currently available. She stated they couldn't predict the future and show what the coverage would look like with 5G because 5G wasn't here yet. She said 5G is something that could go on the existing tower but that isn't what either of their companies provide. She stated that 5G was something that T-Mobile, AT&T, or another cell phone carrier would bring to the tower.

Mike Winge asked if the other company would be allowed to locate there.

Attorney Riley asked on their tower.

Mike Winge replied yes.

Attorney Riley replied yes.

Mike Winge stated so there was a tower there already that would serve both companies.

Attorney Riley replied yes.

Mrs. Rector asked they are already on there aren't they.

Attorney Riley replied yes.

Mrs. Rector stated they are already on SBA's tower and they want the new tower to expand.

Attorney Riley stated they want a separate tower.

Terry Dayvolt stated they want their own tower to get off your tower.

Attorney Riley stated she couldn't tell the Board exactly what they want but could tell them what it looks like to her.

Paul Keller asked if they would take people off SBA's tower to the new tower.

Attorney Riley replied that is what they thought would be the case. She said they couldn't predict and had not been given notice yet that anyone intended to move off the tower, but that is normally what would happen in this type of situation.

Paul Keller asked if their tower would support 5G when it comes.

Attorney Riley stated yes, the tower was just the structure where the antenna hung. She said yes you can put newer 5G antennas and whatever other type of technological infrastructure would go on the tower. She stated all they had to do was potentially modify the tower, which was commonly done in this industry as long as they have foundational capacity. She said there is a lot of foundational capacity left on the current tower.

Mrs. Rector said if she may, she would like for Attorney Doll to get in on this conversation since it seemed to be a competitive argument and she didn't know the legalities of that and would like for him to explain it.

Mike Winge stated he had a question for Morrie on that but he wasn't even looking at the competitive side. He said he is looking at the need for another tower if another tower was going to supply it.

Attorney Doll asked if she could talk about capacities. He asked if SBA's tower is full, or did it have additional capacity. He said secondly, did 5G of the future likely take more; he thought she used the word, foundational capacity. He stated he took it that surface area of a tower where antennas might be mounted; you aren't talking of the foundation of the tower in the soil are you.

Attorney Riley replied yes, there are two different items. She said there is the foundation itself, which is like the concrete pad that cures for a month and then the metal tower that goes on top of it. She said once you exceed the capacity of the foundation itself then you would have to do significant improvements or build a new tower or something like that. She stated they are nowhere near that total capacity on their tower.

Attorney Doll asked how many tenants are occupying their tower at the present time.

Attorney Riley replied three.

Attorney Doll asked if she knew what their tower's structural design was to handle.

Attorney Riley stated she doesn't know what it was initially designed to handle it had been some time since the tower was first built and she didn't have that information. She said she could tell them that it can definitely be modified to accommodate additional co-locators on the existing tower.

Attorney Doll asked if that would be true even if the co-locators were bringing equipment that is more sophisticated for 5G.

Attorney Riley replied yes.

Attorney Doll stated your engineer's report talked about a six-tenths of a mile coverage area, page one of the engineers report last paragraph. He said if your six-tenths of a mile away from this site or more, he thought he indicated .65 miles to the northeast. He stated the Board had other information that said it was .71 miles. He said either way it is about the same distance. He asked if the area of overlap is only the distance of your client's tower and the proposed tower. He stated her color charts are difficult to read.

Attorney Riley replied sure. She said she thinks it is a difficult thing to talk about in terms of exactly how far out it goes because it depended on the height of the structures around it and the lay of the land around it. She stated she thought he was referring to the .60 miles around the site in the last paragraph on the first page.

Attorney Doll replied he is.

Attorney Riley stated that is an area in which both sites provided strong coverage. She said the top paragraph on the first page stats there is .65 miles between the two per their engineer.

Attorney Doll replied yes. He said that is about the same distance. He stated part of the arc from their tower would overlap with part of the arc from the proposed new tower.

Attorney Riley replied sure.

Attorney Doll stated that would be basically the distance they are apart from each other. He asked if that is a fair analysis of the engineer's report.

Attorney Riley replied no.

Attorney Doll stated okay tell me more.

Attorney Riley stated she thinks the fair analysis of the engineer's report is that based on the comparison of these two sites installation of additional antennas on the proposed site would be considered to be an overbuild and thus cell phone companies would not be located on both of the two towers. She said to that extent she cannot draw him a perfect circle, unfortunately, around either tower to say how far coverage would go because as he could see, even (she just picked one of handouts up) coming out from the center of the circle where you see there are areas of excellent coverage. She said that even the exact same distance from that tower going around the circle it isn't like a targeted bullseye where it goes out in ripples or just the next color or the next weakness of signal it is a little more complicated than that. She said unfortunately it isn't a yes or no question.

Attorney Doll stated your color charts have many different colors is blue a high quality service area.

Attorney Riley replied yes.

Attorney Doll asked if green is slightly less but still a high quality service area or is that wrong.

Attorney Riley replied that is correct.

Attorney Doll said yellow is not very good and red is awful.

Attorney Riley replied yes red would be poor coverage but still coverage nonetheless. She stated if you didn't see any color then you aren't getting coverage.

Attorney Doll replied okay. He said what you are talking about is existing SBA versus proposed applicant's coverage on the first sheet. He asked if that is true.

Attorney Riley stated each sheet is a different frequency level. She said they are confusing and she apologized. She stated she preferred to do a power point but sometimes that is harder than printing. She said each one had a different frequency level than another sheet so you couldn't fold two pieces of paper next to each other. She stated unfortunately what you have to do to interpret them is to flip from one side to the other the same piece of paper.

Attorney Doll stated okay, SBA has current tenants under contract on its tower and the gist of your objection is that it is a duplication of availability of tower space that the applicant is seeking to construct six-tenths of a mile from your clients tower.

Attorney Riley replied yes.

Attorney Doll stated, number one, there would probably not be co-location of the same carriers on both towers.

Attorney Riley responded correct.

Attorney Doll stated there is also a possibility your client fears losing tenants from their current tower to the applicant's tower.

Attorney Riley replied that is correct.

Attorney Doll asked if she is aware of any technology or location advantage that the applicant's tower had over their tower.

Attorney Riley replied no.

Attorney Doll stated it isn't a higher tower in the sense they are within 10 feet of each other, that didn't have the ...

Attorney Riley replied they are of very similar height.

Attorney Doll replied okay. He said in the marketplace you should be equal competitors if both towers existed.

Attorney Riley replied that is correct.

Attorney Doll stated okay, he didn't know how her client priced their rent and didn't know that the Board needed to know that. He said it is really none of their business. He asked if it would be safe to say that how cell towers lease space on towers from tower companies, such as your client, is a competitive price system where everybody is ... how your client charges their tenants is similar to how other cell tower companies priced their services.

Attorney Riley replied unfortunately she couldn't say that with any certainty, she knew her client was a publicly traded company and Vertical Bridge was a privately held company.

Attorney Doll stated you don't know if it would be an apple to apple.

Attorney Riley replied right.

Attorney Doll stated there isn't a technological interference that is possible by two towers being constructed within six-tenths of a mile of each other. He said it is a competitiveness in the marketplace concern that your client has.

Attorney Riley responded that is the concern that had sent her to the meeting on behalf of her client. She stated she could say there are items clearly laid out in the Comprehensive Plan and Zoning Ordinance that require co-locating. She said in choosing to build the tower where it initially went, those things had been factored into that decision as well.

Attorney Doll replied right. He stated she specifically talked about the provision in the Comprehensive Plan and the Zoning Special Use.

Attorney Riley replied yes.

Mike Moesner asked if they currently had room for one more co-locator on their tower.

Attorney Riley stated she couldn't say how many more could necessarily fit on the tower but she would say that the applicant is currently located on the tower and that the tower could certainly be modifiable to accommodate additional carriers.

Mike Moesner stated he is curious how many other carriers are out there and that if there was a second tower that they would want to move in as well. He said more than what you would be able to supply.

Attorney Riley responded sure and that she couldn't say unfortunately.

Mike Winge asked if this is about getting good clear coverage from the least amount of towers or to provide enough towers to be competitive. He stated he is looking at it for the people in the community, the least towers is obviously the better. He said everybody is complaining about all of the stuff that goes in. He stated he is trying to stay away from the competitive side.

Attorney Riley stated she would say while it is certainly possible where you could actually reach a level where you needed more towers in order to accommodate all of the companies and that is something the Federal Law required you to consider but this isn't that situation. She said this is a situation where this company has already been accommodated on the existing tower and there isn't someone new to the market saying that they needed somewhere to go in this area.

Mike Winge asked if their equipment is able to compete with theirs as far as distance, penetration, and so forth.

Attorney Riley stated neither one of them, Vertical Bridge or SBA, has the equipment that has the penetration. She said it is the tenant's equipment that did that from their metal structures.

Attorney Doll stated they didn't own the cell phone systems they just provided the tower to bolt it to. He said under the Special Use of the ordinance on page 35, one of the things that is required is evidence demonstrating that no existing tower or structure could accommodate the applicant's proposed towers. He said again, to be clear, Vertical Bridge is not going to have antennas of their own they are just going to be a landlord much like your client. He asked is it your position that technologically your engineering report asserts that your existing tower could accommodate the same type of antennas that covered generally the same area of the county.

Attorney Riley replied yes.

Attorney Doll stated so technologically they can cover the same and geographically they could cover virtually the same area is what you were contingent.

Attorney Riley replied yes, virtually but they aren't identical obviously but they were similar enough that someone sent her there.

Attorney Doll asked if she could speak to whether there are any gaps in coverage that the towers could respectfully close if both are permitted or not.

Attorney Riley stated based on the evidence she has from their engineer, who is an independent engineer but yes hired by SBA to give them that information, this would not close a gap in coverage to the best information they have available.

Attorney Doll stated it would just be a duplicate then.

Attorney Riley replied right.

Attorney Doll stated your client's contingent is their tower height and structural strength are sufficient to meet the future technology needs.

Attorney Riley replied yes.

Attorney Doll stated as well would be Vertical Towers. He said you don't have any reason to believe that what they have indicated their tower could accomplish in the future is not true do you.

Attorney Riley responded no she didn't.

Terry Dayvolt asked if their engineering report gives the Board a number of antennas that could be put on their tower.

Attorney Riley stated no that was proprietary information that unfortunately she isn't allowed to share.

Attorney Doll asked if he could build on that question.

Terry Dayvolt replied okay.

Attorney Doll asked if she knows if her client currently has available space for additional cell phone companies to place antennas on their tower.

Attorney Riley responded yes, they do.

Attorney Doll asked her if she knows how many.

Attorney Riley replied no, sorry.

Attorney Doll stated he is just trying to answer the question.

Mike Moesner stated that was the question he had a while ago was how many other companies would be able to come in if there was a second tower versus only having the one tower. He asked if they are limited to how many companies could come in.

Mike Winge stated if there are two companies that are going to be there already or three or whatever they had and it covered all of the areas why would they want a whole bunch more. He said they already have competitive going there why in the world would they want to keep going. He stated you could end up with 15 or 20 towers if that many people wanted to come in.

Terry Dayvolt stated that was his question also.

Attorney Riley stated to be clear if there were other companies coming in she did think that you would be required by Federal Law to approve additional towers but that isn't the situation there.

Mike Winge replied yes, with adequate.

Attorney Riley replied sure.

Paul Keller stated you are talking about other providers coming in that want towers.

Attorney Riley responded right. She said right now that isn't the situation.

Attorney Doll asked if she is talking about the telecommunications act of 1996.

Attorney Riley responded yes.

Terry Dayvolt stated he was talking about the future.

Attorney Doll said what the statement would be was that if there was demand, an unmet need in the community and there were companies that wished to come in under Telecommunications Act of 1996, the Board is forbidden by Federal Law from prohibiting or over regulating or over restricting the construction of new towers to meet these needs. He said the question before the Board is whether such need exists presently or not.

Mike Winge stated it doesn't.

Attorney Doll responded that is for them to decide. He said obviously Vertical Tower wants to respond to all of this so we will need to hear from him again.

After ascertaining there were no other questions for Attorney Riley at this time, Chairman Valiant gave Mr. Briggs a chance to respond.

Attorney Briggs stated he wanted to pass out another handout. He said what he had passed out is a letter from T-Mobile's start up engineer with a statement of need. He stated he thought the letter was included in the application. He stated the other document was a propagation map with just the in building coverage showing without the site they are proposing and with the site. He said SBA wants you to think this is a business decision but it isn't. He said T-Mobile and Vertical Bridge are there for a reason. He stated they are going to invest \$200,000 to \$300,000 dollars on this project. He said they are there to improve the coverage to Boonville and Warrick County, period. He stated it didn't have anything to do with SBA, nothing to do with their tower, and nothing to do with their revenue. He said they went deep here if it isn't something T-Mobile is trying to do to improve their coverage. He stated you can see that on the handouts. He said the other question that needed to be asked is when you talk about space on the tower, it isn't so much vertical space as capacity. He stated the towers these days have to abide Rev H of the building code and that is a little bit greater requirements. He said to his understanding the SBA tower that she is talking about has been modified several times already. He stated there is a limit to what could be done as far as modification to a tower. He said however, again this is not a

business decision this is a request by T-Mobil and Vertical Bridge to invest in this community, to improve the coverage that they have now, and to bring newer technologies to this area.

Attorney Doll asked on one of the maps in the coverage with the new tower location, the reason that the indoor coverage is so much greater is the 5G technology. He said it isn't really the location of the new tower, if the towers are six-tenths of a mile apart and he didn't have a dog in this fight, he is just asking the question for the Board. He stated if you installed 5G technology on the existing tower would you have virtually the same indoor coverage footprint, as there would be on the third page of the recent handout.

Attorney Briggs replied no.

Attorney Doll asked why.

Attorney Briggs replied six-tenths of a mile in their frequency data was 100 miles. He said this proposed tower, not specifically but speaking of, it is a great distance.

Attorney Doll stated it is a big distance.

Attorney Briggs replied it is a big distance. He said look at it this way, six-tenths of a mile if you are looking at the outer edge of the six-tenths of a mile and those people living in the area of the six-tenths of a mile didn't have indoor coverage for a 911 call it is very important.

Attorney Doll said it seemed to him the tower that currently existed is closer to the city limits of Boonville than the proposed site.

Attorney Briggs replied yes.

Attorney Doll stated if the goal is indoor coverage and a population area in Warrick County of concentration was Boonville isn't it accurate that locating 5G technology on the existing tower would insure greater indoor coverage to the town of Boonville and all of the buildings there as opposed to the proposed new tower.

Attorney Briggs replied not necessarily but maybe for downtown you would get an overlap of coverage.

Attorney Doll stated he is looking at the south side on your page three. He said the south side of town of Boonville is sketchy or sporadic in coverage and he assumed the white meant it is not covered.

Attorney Briggs agreed.

Attorney Doll stated and the gray meant it is covered.

Attorney Briggs said yes.

Attorney Doll stated wouldn't it actually include more elementary school area and things on the south side of Boonville if the 5G technology, and nothing prohibited it from being on both towers but if the 5G technology is on the existing tower, which is six-tenths of a mile closer to northern boundary of Boonville. He said wouldn't that insure greater coverage south of town.

Attorney Briggs stated it would still cover the town. He said what you would gain is north of town and east of town and close up some coverage gaps. He said the thing is you were assuming that the 5G technology could go on the SBA tower.

Attorney Doll stated that is what the representation is that it could go on the SBA tower.

Attorney Briggs said he understood that.

Attorney Doll asked if he had information that that isn't true.

Attorney Briggs stated he didn't have information that it wasn't true other than the last equipment change out that T-Mobile made in 2015 the tower failed and had to be structurally modified. He said that was four years ago under he thought it was Rev F.

Attorney Doll asked when you said failed you mean it didn't meet the engineering standards.

Attorney Briggs replied correct.

Attorney Doll asked if he had any personal knowledge of what structural changes were performed to the existing tower and therefore whether it is sufficient to cover Rev H.

Attorney Briggs responded he didn't.

Mike Winge asked wasn't the statement made Morrie that they would update the tower if it had to be.

Attorney Doll replied yes, he thought that was a statement that had been made but maybe counsel could answer the question on whether the upgrade in 2015 was a Rev H qualified upgrade or not. He said that would be for a later moment. He stated it is one of the standards in Warrick County to encourage co-location to the maximum degree so we didn't live in a populated county of cell towers. He said if there were a public purpose to be gained then the Board would want to know that. He stated if they are just building cell towers to beat somebody else in a business transaction the Board would want to know that also.

Attorney Briggs stated SBA had showed up to other hearings and quoted similar stuff. He said it isn't a business decision and it isn't anything about their towers. He stated this is an investment by T-Mobile and Vertical Bridge. He said it is a very expensive project that they wouldn't spend the money if they didn't need to.

Mike Winge asked how could that not be a business decision if they are investing money to expand and build a better provider or whatever.

Attorney Briggs stated it is a decision based on the RF coverage objectives that T-Mobile is trying to achieve.

Terry Dayvolt asked if T-Mobile has the RF objective right now where they are located.

Attorney Briggs replied no, they had coverage gaps right now where they are located.

Terry Dayvolt asked if it is because of the equipment.

Attorney Briggs stated it is because of the equipment they could not place on the tower because of the structural capacity and the location.

Terry Dayvolt asked if SBA is required to upgrade where it could be put on there or is it T-Mobile's place.

Attorney Briggs replied he couldn't speak on behalf of SBA. He said if they could they would be happy to co-locate the primary objective was to co-locate whenever possible. He stated if you wanted to look at it from a business decision co-locating would be the cheapest way to go. He said in this case in order to get all of the technologies on the tower and have it compliment the other existing sites, which is what the proposed tower would achieve.

Mike Moesner asked if T-Mobile had looked at it from where they were now and decided it would be better to go to a different tower location as opposed to spending the money on the existing tower then.

Attorney Briggs stated there were a lot of things; first, the technology was changing so the signal was shrinking. He stated they would shift if possible when you could, shift your sites to cover the gaps that you now had. He said twenty years ago you had GSM or even cellular technology and it covered a wide range and that is now becoming smaller and smaller.

Mike Winge asked why they keep shrinking it and if the technology was so good with the penetration then we would have a whole lot more towers and a whole lot more penetration and a lot more of the frequencies that people are going to have to live with them around and deal with them.

Attorney Briggs stated he was right. He said the technology and where it is at now required more sites. He stated that is a fact.

Mike Winge stated the people would complain more about all of the sites and ...

Attorney Briggs stated they would complain when they didn't have coverage either. He said if you look at the telecom map, it is mentioned that there has been a big push by the Federal Government, the FCC, and even Indiana to get these sites deployed as quickly as possible to bring the technology to the citizens, the people. He stated Indiana has recently passed a lot of legislation in 2017 for wireless technology, so they are pushing it as well.

Attorney Doll asked do you believe that there is evidence that no existing tower or structure would accommodate this proposed 5G technology that was forthcoming.

Attorney Briggs stated it isn't just 5G it is the amount of equipment that would be going up there.

Attorney Doll asked if 5G is the biggest portion of the new equipment.

Attorney Briggs replied it would be equal to probably any of the other technologies but as he said there are four technologies going on the proposed tower.

Attorney Doll asked more than just 5G was it his position that no existing towers or structure would accommodate the new technology or the technology either because no existing tower structure met the engineering requirements or fell within the geographical area intended to be served.

Attorney Briggs replied that is correct.

Attorney Doll asked if there was any evidence, any engineering reports, that maybe were contained in their original packet.

Attorney Briggs asked as far as the structural capacity of the SBA tower.

Attorney Doll replied yes.

Attorney Briggs replied no.

Attorney Doll asked or the geographical service area.

Attorney Briggs stated just the appropriation map that you had and the letter from the T-Mobile engineer.

Paul Keller asked if he could ask a silly question. He stated he isn't an engineer by any means.

Attorney Briggs stated absolutely he isn't either.

Paul Keller asked if they went to 6G would they have to shrink the towers some more.

Mike Winge said probably.

Attorney Briggs replied he didn't know.

Paul Keller stated it seemed counterproductive that you shrink the towers when you have a big expense and you say now the technology is getting better but we have to shrink the towers.

Attorney Briggs stated he understood everyone's concern, he really did. He said the fact of the matter is the newer technology, whether it is better to you or better to someone else is all whether they are using their phone for downloading, YouTube, or what have you but he couldn't say where the technology is going. He stated there are obviously things that these towers would go away eventually and the equipment would be smaller.

Mike Winge stated it sounded to him like they didn't have the new technology they are just putting more towers to strengthen what they did have and to have it more concentrated. He said the locations they have with the towers if the technology is there you would think they could increase that but they aren't they had to have more towers so they could make it more concentrated and cover the area. He said he thinks that is kind of coming as a disguise.

Attorney Briggs said let him just say this; the background on this is when the FCC issued a license for a particular technology. He stated that came with a mandate that that company has to build out that area with that technology or they would lose that license. He said when you talk about business decisions this is billions of dollars that are spent just on the license alone from the FCC to operate within those frequencies. He said that FCC licenses that are issued came with a mandate that you have to build out that geographic area with that technology.

Terry Dayvolt asked if they are operating within these rules now.

Attorney Briggs replied no

Terry Dayvolt asked why not.

Attorney Briggs responded this is recent technology that has to catch up with the equipment that has to be made with the technology. He said there is also with the 5G there is some speed that has to be achieved for upload and download before you can actually term it 5G.

Terry Dayvolt stated you don't have the technology yet.

Attorney Briggs replied the technology is not in this geographic area but there is 5G technology deployed throughout the country in several different areas.

Chairman Valiant asked how far away from getting it here.

Terry Dayvolt stated that is what he had wondered.

Attorney Briggs asked as far as time wise or... He said the equipment that would be going on the new tower would be 5G capable. He stated again, the other side of that was they have to bring fiber to that tower to increase the speed.

Terry Dayvolt stated they are using that to get the tower in there but like he said how long were they looking at 5 years down the road or ...

Attorney Briggs stated no, he couldn't give them a timeframe but the equipment would go on the tower when the tower was built. He said the tower would be built within six to nine months of the permit being issued.

Mike Moesner asked if the equipment they put on the tower now it would also default back to older and older technology.

Attorney Briggs stated the oldest one would be 2G which is GSM and then UMTS.

Mike Moesner asked if eventually they wouldn't have to have separate equipment to get the...

Attorney Briggs replied yes, you do. He said they have to have separate antennas to get and separate radios and separate equipment on the ground. He stated there is more and more that is going on these towers.

Mike Moesner asked if that is all included when they go to the 5G technology.

Attorney Briggs stated all of the others will still be active. He said you will have GSM, UMTS, LTE, and LTE 5G all active on that tower.

Paul Keller asked if that is because there are millions of devices that wouldn't handle 5G correct.

Attorney Briggs stated he didn't know it depended on how often people upgraded.

Chairman Valiant stated you see it on the ads now they are 5G capable.

Attorney Briggs stated he has 5G on his phone when he is at airports and stuff. He said they are targeting high traffic areas but it is there. He stated it is very interesting technology that can be utilized in many different ways.

Attorney Doll asked Attorney Riley if she knew what the last upgrade of the tower was and whether it would meet regulations for Rev H standards now that would carry the 5G in the wind.

Attorney Riley stated she didn't know about that. She said obviously whatever requirements came along SBA must comply with, they couldn't just go out of compliance with standards that were required by Federal Law.

Attorney Doll asked if they are limited by whatever their foundation was to.

Attorney Riley stated they could potentially be limited by that but it isn't a problem for the foreseeable future.

Mike Moesner asked if T-Mobile is currently on their tower.

Attorney Riley replied yes.

Mike Moesner asked the reason they didn't want to step up to the next thing.

Attorney Riley stated she couldn't answer that.

Mrs. Rector stated this was the first time the Board has ever had someone show up against another company for cell towers. She asked if they are normally located on their towers and that is why Attorney Briggs made the statement that you had come to other hearings that they were looking at.

Attorney Riley stated they have a similar situation in Tell City right now. She said SBA and Vertical Bridge are both tower companies. She stated neither one of them are cell phone companies, you can't get a plan from SBA or Vertical Bridge so they are in direct competition with them for just providing the metal structure for antennas to go on.

Terry Dayvolt asked if they have anyone co-oping with them as this gentleman had told them T-Mobile and Vertical Bridge are co-oping together to build this tower.

Attorney Riley stated her understanding of what he had indicated was T-Mobile is the proposed first tenant that has agreed to go on the new tower that Vertical Bridge was proposing. She said SBA owned an existing tower that has several tenants on it so they aren't actively trying to get additional permits in this area with any cell phone companies in particular. She stated they are a publicly traded so they weren't to the extent that any phone company might own an interest in it that would just be on the job market it wouldn't be a partnership.

Terry Dayvolt asked how many cell phone towers they owned in Warrick County.

Attorney Riley stated she did not know that off the top of her head. She said there ss probably a lot of information she could get but unfortunately she was limited by what one could expect would commonly be asked so they had stumped her.

Mike Moesner asked Attorney Briggs why T-Mobile didn't consider upgrading on the existing tower they are on versus contacting him and building a new tower to put their upgrade on.

Chairman Valiant stated he thought he had said it was due to the structure that was there was not...

Attorney Briggs stated T-Mobile started the process first with a need. He said they reached out to Vertical Bridge and said they needed a site in that location and would they build one.

Attorney Doll stated to the Board that they had been passed out a copy from the Comprehensive Zoning Ordinance and the paragraph that he had asked Molly to copy and pass out is paragraph four on page 35. He said the rest of the paragraph really didn't have anything to do with co-location requirements.

Terry Dayvolt said that he wanted to ask him about paragraph three. He said information regarding the number of antennas was that the proposed new tower or structure was designated, designed to, or could safely accommodate; how many could theirs.

Attorney Briggs replied four. He stated it is in the plans. He said it is designed for four carriers both on the ground and on the tower space.

Terry Dayvolt stated his mind is swimming with technology and antennas. He said so it could hold four antennas.

Attorney Briggs replied no, four co-locators. He said four sets of antennas, four different wireless providers could co-locate on this tower and they would have structural capacity and ground space for that.

Mike Moesner stated in other words it could be two T-Mobile, Verizon, and AT&T or whatever.

Attorney Doll stated each provider could have five different types of antennas.

Attorney Briggs responded four as far as the technology.

Attorney Doll stated the total number of antennas on your proposed tower; four times four would be 16 so theoretically there could be 16 antennas from four different carriers co-located on this tower.

Attorney Briggs stated actually more than that.

Attorney Doll asked how.

Attorney Briggs replied the minimum amount it would be designed for would be two antennas per sector and there was three sectors.

Attorney Doll asked three times that number.

Attorney Briggs stated it would be a minimum of six per carrier so six times four is 24 antennas. He said the other thing is it isn't just antennas anymore it is the radios that go up behind the antennas. He said these things were 50-70 pounds and they are putting up 15-21 radios for this technology.

Paul Keller asked how many potential companies are there out there to take advantage of the proposed tower in this area.

Attorney Briggs stated there are five basic ones right now. There is Verizon, AT&T, T-Mobile, Sprint, and US Cellular and there are a couple that have licenses but haven't built them out yet. He said one of them is Dish Network. He said they are one of the largest license holders in the country. He stated there are potentially more carriers down the road.

Paul Keller asked if they would both be competing for the same carriers.

Attorney Briggs stated yes, but they aren't there to compete with them. He stated that wasn't why he is there.

Paul Keller stated you would still have potentially two towers with a lot of extra capacity.

Mike Winge stated two towers would be competing.

Paul Keller stated if you have two towers and they are six-tenths of a mile apart, you have competition.

Attorney Briggs stated if you look at the map presented to you in your packet it shows the existing towers that they looked at and you can see that there are two crown towers that are northwest of their site that are probably within a quarter of a mile of each other.

Paul Keller asked if they are owned by the same company.

Attorney Briggs replied yes, but that might not have been how they originally started out. He said the other thing going on in this industry was years past the wireless companies would build their own towers it would be an AT&T tower, a Verizon tower, or whatever. He stated they pretty much don't do that anymore now you have tower companies doing that for them.

Mike Moesner asked if they didn't want to spend the capital to do that.

Attorney Briggs stated there are still some expenditure they still have when they do add to towers.

Paul Keller stated you could put five towers up. He said economically you could put one tower up and take care of five carries and that would make a lot more sense.

Attorney Briggs replied absolutely. He said the other thing is (too much discussion in the background to understand anything)

Mike Winge stated he was going to interject and ask Morrie a question. He stated he had been listening to this like 15 minutes and this paragraph four said this section should be interpreted not

to mandate but rather to encourage co-locate. He asked if he wanted to build a tower, he was there for the reason to build a tower, then the Board couldn't tell him no you have to get on the other tower. He said then we had to let him build a tower.

Attorney Doll stated they have no ability to interfere in the business structure or cell tower construction. He said however, you have to read that sentence in context with the whole paragraph and you have to know whether there is evidence demonstrating no existing tower or structure could accommodate the applicants proposed antennas. He stated either because there are no existing towers or structures meeting the applicants engineering requirements. He said that sounded like structural integrity or strength. He added within the geographical area, that is geography that the antennas are intended to serve. He stated or if there are, towers or structures within the geographical area evidence that said, structures did not have sufficient height or structural strength to meet the applicant's engineering requirements. He stated height is similar; the question has to be structural strength as to whether or not the older tower of SBA is structurally strong enough for the weight of the new technology and the new higher wind ratings in the regulations that the Board heard about today. He said they could not mandate, no T-Mobile, you have to stay where you are but we can encourage co-location as possible. He stated he isn't sure how they can do that but that is what the ordinance permitted. He added the Ordinance complied with the telecommunications act of 1996, which generally forbid State and Local Government's authorities in regulating the placement, construction, or modification of personal wireless service facilities to unreasonably discriminate among providers of functionally equivalent services where to prohibit or have the effect of prohibiting the provision of personal wireless services. He stated their hands are tied by Federal Government. He said they are somewhat tied now by State Government. He stated the question has to be if the Board saw a need the existing structure did not meet then you should approve the tower application. He said if you believe the existing tower or structures meet the proposed future need of 5G and the other related radios and frequencies that are going to be covered then it is up to the Board to decide how they want to vote.

Mike Winge stated he is going to make a motion.

I, Mike Winge, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.

6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to an anti-climbing device and/or fence, be put up around tower.
8. Subject to the following from the Warrick County Comprehensive Zoning Ordinance:
All abandoned or unused towers and associated facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Board of Zoning Appeals.

Motion seconded by Doris Horn and was unanimously approved.

Mrs. Rector told him the office would have his approval done by Wednesday.

BZA-SU-18-14

APPLICANT: Liberty Mine, LLC by Alex Messamore, Manager Land Acquisition and Permits

OWNER: Alcoa Fuels Inc, Alcoa Warrick LLC, H&L Farms LLC, Lackehart, Inc C/O Donald H. Keith, Hart, Hart, Peake & Robertson, Tweedy Farms Trust.

PREMISIS AFFECTED: 2,720 acres located on the South side of New Harmony Rd and 796 acres located on the South side of Millersburg Rd approximately 1 mile Northwest of the intersection formed by Eskew Rd and Millersburgh Rd. Boon & Ohio Twp.

NATURE OF CASE: Applicant requests a Special Use, SU 13, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow mineral extraction, storage, and processing in an Urban Area in a “CON” Conservancy & Recreational Area and “A” Agricultural Zoning District. (*Advertised in the Standard July 5, 2018.*) *Continued from July 18, 2018 and August 24, 2018, September 24, 2018, October 22, 2018, November 26, 2018, and December 17, 2018.*

Attorney Doll stated they had copied and passed out to the Board an email that was received today from John Henderson, which is the attorney for Alcoa, property owner in this Special Use Application. He stated it was also copied to Dirk Stahl who is the attorney for Liberty Mine, which is the applicant for this Special Use 13. He stated there had been at least two news reports published indicating that perhaps there was no current interest in proceeding with this mine although it had been denied that that was in fact true. He said it have been stated to him by email correspondence that they did intend to proceed. He stated there was an email he would like to be made a part of tonight's record in this deliberation and he would just read it quickly. He said they hoped to be submitting the motion to enter the Consent Decree to Judge Held within the next day or so as a result, they would not be in a position to move forward tonight. He said however, as he mentioned in an email last week the SU 13 application would not be withdrawn rather Liberty would be amending the SU 13 application to request additional time to commence operations. He stated that process would involve getting a new certification of the affected property owners and re-noticing all of them. He said in any event they would not be asking the BZA to consider the application currently, but would instead be asking them to consider an amended application (copy on file). He said he had not spoken to Mr. Henderson this afternoon as he was in Drainage Board and etcetera hearings but that was really all he knew. He stated he guessed he was curious about why there would be a new certification of affected property owners.

Mrs. Rector stated it said that if you amended it they had to re-notice.

Attorney Doll stated he knew they had to re-notice but a new certification sounded to him as if the boundaries might be different.

Mrs. Rector stated she didn't know if it meant the certification, where they certified where they mailed to all of the adjacent property owners and it was notarized might be what they meant.

Attorney Doll replied it might be. He said they are in negotiations to get an agreement but they didn't yet have an agreement. He stated as they had told the Board before they hoped to reach an agreement to submit to Special Judge Held who had been hearing the case between Alcoa, Town of Newburgh, and Save Our Homes organization.

Mrs. Rector replied City of Boonville.

Attorney Doll said he was sorry yes; it is the City of Boonville. He said they did not yet have a Consent Decree in place. He stated when they did they would be bringing a different application. He said that is all he had to report and it is up to the Board whether they want to continue it again, to be amended at a later date, or take other action, which can include removing it from the agenda.

Terry Dayvolt asked if the Board could just table this item until they made a request to come before the Board.

Attorney Doll stated they could not table something indefinitely. He said they can table it for a month, two months like they have already done, but they cannot table it indefinitely.

Chairman Valiant stated they would be amending it anyway.

Paul Keller asked if they removed it from the agenda that just meant they would have to re-apply.

Attorney Doll stated yes they would have to re-apply.

Mrs. Rector stated they said they are going to anyway. She said they are going to file an amended one.

Chairman Valiant said yes, that is what they said. He said it is up to the wishes of the Board.

Doris Horn made a motion to amend BZA-SU-18-14.

Attorney Doll told her the Board couldn't amend it, only the applicant can amend it. He said all they can do is either table until the March or April meeting or you can make a motion to remove the item from the agenda as a pending application, which will require them to start all over. He said those are really the only two choices but they have no authority to amend their application.

Terry Dayvolt made a motion that the Board remove BZA-SU-18-14 from the agenda. The motion was seconded by Mike Moesner and unanimously carried.

ATTORNEY BUSINESS

None

EXECUTIVE BUSINESS

None

Doris Horn made a motion to adjourn the meeting. The motion was seconded by Mike Winge and unanimously carried. The meeting adjourned at 7:22 pm.

Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting February 25, 2019.

Sherri Rector, Executive Director